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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL LODGING NO. 356 OF 2017
IN
COMPANY PETITION NO. 802 OF 2015

Permasteelisa (India) Pvt. Ltd.

.. Appellant
(Org. Petitioner)

Vs.

Sheth Developers Private Limited

.. Respondent
(Org. Respondent)

Dr. Abhinav Chandrachud a/w Mr. Avinav Mukherjee i/by Mr. Mustafa Motiwala for the appellant.

Mr. Raju M. Yamgar a/w Mr. Manish P. Gitay for respondent.

CORAM: NARESH H. PATIL &
NITIN W. SAMBRE, JJ.

FEBRUARY 07, 2018.

P.C.

1. The appeal is directed against the order passed by the learned Single Judge dated 20/7/2017 in Company Petition No. 802 of 2015, whereby the said petition came to be dismissed.

2. The learned counsel appearing for the appellant submits that the learned Single Judge erred in appreciating the case of the appellant. It

is submitted that the work for Cynergy was completed satisfactorily and was handed over by the appellant to the respondent-company on 31/5/2011. The defect liability period expired on completion of one year i.e. 31/5/2012. The grievance of the respondent-company arose after the defect liability period was over. It was submitted that the retention amount of Rs.1,31,30,698/- (Rupees One Crore Thirty One Lakhs Thirty Thousand Six Hundred Ninety Eight only) became due and payable by the respondent-company on 1/6/2012. On 25/7/2012, the respondent-company was granted an occupation certificate. Some minor defects were noticed on 24/6/2013 in respect of Cynergy, which were attended to by the appellant. The counsel submitted that after the defect liability period and in view of the contractual terms and the correspondence exchanged, the respondent had no authority not to release the retention amount, which is a substantial amount.

3. The learned counsel appearing for the respondent has supported the order passed by the learned Single Judge. The learned counsel referred to the notices dated 11/10/2013 and 6/4/2015 addressed to the respondent. These notices were replied on 13/5/2015. In the submission of the learned counsel, dispute raised by the respondent is

bona fide and substantial one. Therefore, in view of the facts and the stand adopted by the respondent, a petitioner under Sections 433(e), 434 read with Section 439 of the Companies Act, 1956 for winding up is not maintainable. Winding up of the Company is a harsh and drastic step. The facts do not support such a remedy. It is submitted that 95% of the contractual amount has already been released by the respondent except 5% amount, which is outstanding.

4. The learned counsel appearing for the respondent placed reliance on the following judgments in support of his submissions:

- (a) Iba Health (India) Private Limited vs. Info-Drive Systems Snd. Bhd. [(2010) 10 SCC 553].
- (b) H. Q. Chemicals Ltd. vs. Care Formulators Pvt. Ltd. [2001 (4) Mh.L.J. 451].

5. We have perused the impugned order, the judgments cited supra and the record placed before us. After going through the correspondence between the parties, we find that the learned Single Judge has adopted a reasonable view in the matter. We do not notice any

perversity in the view adopted by the learned Single Judge. The submission that after the defect liability period was over, the respondent had no other option but to release 5% retention amount has been disputed by the respondent on some substantial grounds. Certain correspondence exchanged between the parties is referred to and relied upon by the respondent. A bona fide dispute has been raised by the respondent in respect of the claim of the appellant. In view of the dispute raised by the respondent, being bona fide and genuine, the learned Single Judge disallowed the appellant's relief of petition filed for winding up of the respondent-Company.

6. There is no merit in the appeal. The appeal is accordingly dismissed.

(NITIN W. SAMBRE J.)

(NARESH H. PATIL,J.)